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C O N F I D E N T I A L SECTION 01 OF 04 ABUJA 000856

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SUBJECT: NIGERIA: INL NARCOTICS CERTIFICATION
DEMARCHÉ

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11. (C) Ambassador and RNLEO delivered the non-paper on narcotics and law enforcement certification to the Minister of Justice Kanu Agabi on May 5. The Ambassador methodically addressed each area of cooperation and the benchmarks that will guide next year's certification determination. In the area of major trafficking, the importance of fully funding the NDLEA and the Joint Task Force (JTF) so that they can be more active in identifying and pursuing major Nigerian-based drug traffickers was stressed. Ambassador Jeter emphasized that the lack of progress in this area was a disappointment that caused concern within the USG.

12. (C) Minister Agabi responded positively to these points. Agabi stated that the NDLEA was not adequately funded and that he had formally written the President requesting that this deficiency be corrected. According to the Minister, the President directed the Minister of Finance to augment the NDLEA budget; however, to date, no additional funding has been forthcoming. On interdiction, the Ambassador pointed out that adequate funding was crucial to stop illegal substances and miscreant passengers, especially in light of the World Airways direct flights from Lagos to the U.S. scheduled to start later this month. The MOJ signaled agreement, asserting that he would repeat his NDLEA funding request to the President.

13. (C) Regarding extradition, Jeter thanked Agabi for his personal involvement in the case of Gabriel Umoh and requested a status report on the case of Daniel Oruh. The Minister directed his staff to get an update on Oruh from the prosecuting attorney to pass to the Embassy. Ambassador and RNLEO expressed concern over the numerous delaying tactics employed by the defense and emphasized the importance of completing the case. Ambassador reminded the MOJ of our long-standing suggestion for a special panel to hear extradition cases. The MOJ stated that, "extradition cases could be handled by one judge, if he were properly compensated." He further stated that Chief Justice Uwais is amenable to appointing a specific judge to hear extradition cases. Agabi promised to discuss appointment of a special extradition judge with the Chief Justice.

14. (C) On money-laundering, Jeter reminded the MOJ that Nigeria still had, "things to do" to meet the FATF requirements. The MOJ agreed, stating the Economic and Financial Crimes Commission (EFCC) established by legislation in December 2002 was still not operative. Agabi sent a letter to the President requesting the necessary funding for the EFCC. This funding issue is also resident in the in-box of the Minister of Finance.

15. (C) On corruption, we emphasized the need for honest, effective law enforcement and scrutiny of public officials. In that regard, the ICPC remained a concern. Ambassador asked for an update on the status of the attempt to amend the anti-corruption legislation. The MOJ replied, "the National Assembly enacted the legislation, which took away the power of the ICPC to prosecute", and sent the diluted legislation to the President for signature. The President returned the unsatisfactory amendment to the National Assembly contending that the change was unconstitutional. Given the President's refusal to bend to the National Assembly on this issue, Minister Agabi stated that the Anti-Corruption Act of 2000 was

still in effect; he did not believe that there would be other serious attempts at amending the Act.

16. (C) Agabi remarked that the Chairman of the ICPC should be a "young and reckless" person who was not afraid to challenge major political figures and who, because of youth, had not been tainted by the system. After acknowledging that the USG/GON dialogue on demand reduction had been limited, we outlined the need for continued cooperation on this as well as the benefits of controlled delivery operations for Nigeria. Jeter explained that Nigeria would get credit for participation even if arrests were made in another country. We assured the MOJ the USG was prepared to continue providing training and other technical and material support to the NDLEA, Nigerian Police and Nigerian Customs. The Minister thanked the Ambassador and RNLEO for what the U.S. has done so far and assured us that he would inform the President of the benchmarks and would provide us the President's response.

17. (U) RNLEO will make certification demarche to the NDLEA Chairman during an upcoming visit to Lagos.

18. (U) The text of the non-paper is included below.

Narcotics and Law Enforcement Certification-2004
(Nigeria)

Overview

-- In order to ensure that we have a clear and constructive dialogue with your government on narcotics cooperation, we are providing information on the areas of performance that will be the primary focus of U.S. Government (USG) analysis in making next year's certification determination. These performance objectives are based on the 1988 UN Convention. We urge the Government of Nigeria (GON) to meet the objectives set out in the 1988 Convention.

--The USG, in making its decision on whether to certify Nigeria as fully cooperating with the United States to achieve full compliance with the goals and objectives of the 1988 UN Convention will look for concrete measurable actions in the following areas.

1A. Major Traffickers

We look forward to increased Government of Nigeria (GON) cooperation in dismantling Nigeria-based drug trafficking networks, prosecuting those involved, and instituting a cooperative liaison relationship so networks will not reappear once they have been dismantled.

The benchmarks for cooperation against major traffickers include increased effectiveness of the Nigerian National Drug Law Enforcement Agency (NDLEA) and U.S. Drug Enforcement Administration (DEA) supported Joint Task Force, and, importantly, the investigation and arrest of at least a major Nigerian-based drug trafficker. Lastly, we look to the GON to fund adequately the NDLEA at a level to support salaries and core operations as an indication of the GON's commitment to support drug enforcement efforts.

1B. Extradition

Under article 6 of the 1988 UN Convention, Nigeria is obligated to endeavor to expedite extradition procedures and simplify evidentiary requirements relating thereto in respect of offences covered by the Convention. GON needs to continue to make progress towards establishing a reliable system that will allow extradition requests to be heard expeditiously and fairly, respecting due process rights of the individuals involved without becoming bogged down by delaying tactics.

In 2002, the GON began to strengthen its extradition process. GON Attorney General and Minister of Justice

Kanu Agabi continued to strengthen the extradition request process, and oversaw the extradition request of Mr. Gabriel Umoh, the first successful extradition case.

The benchmark for article 6 will be for the GON to continue to strengthen its extradition practice and procedures, and make progress in resolving pending cases. We understand that the extradition proceeding of Mr. Daniel Oruhio is underway, and we look forward to an efficient judicial process.

C. Interdiction

We note the GON's National Drug Law Enforcement Agency's (NDLEA) ongoing efforts to apprehend drug couriers transiting Nigeria. These efforts must be stepped up if Nigeria is to be seen as cooperating with the United States to implement articles 15, 17, and 19 of the 1988 UN Convention. The NDLEA must exercise its authority at key air and seaports to interdict illegal narcotics transiting the country.

The benchmark for cooperation in the area of drug interdiction is that the GON must demonstrate that they have successfully seized at least one significant illicit drug shipment of heroin or cocaine. INL's Regional Narcotics Law Enforcement Officer (RNLEO) and U. S. DEA Attache must confirm whether the amount of illegal drugs seized is significant.

In particular, the NDLEA shall continue its efforts at the airport in Lagos to ensure that any direct flights to the United States from Lagos do not become major conduits for drug trafficking. Further, the NDLEA must increase its efforts to utilize the INL-donated drug detectors (Itemizers) at its airports. Also, the GON should establish a plan to exercise greater control over mail and commercial delivery services.

D. Money Laundering

In June 2001, the Financial Action Task Force (FATF) added Nigeria to its list of Non-Cooperating Country or Territory (NCCT) in combating money laundering. In June 2002, FATF stated that it would consider recommending countermeasures against Nigeria at its October 2002 plenary if Nigeria did not engage the FATF Africa Middle East Review Group (AMERG) and move quickly to enact legislative reforms that addressed FATF concerns. In October 2002, FATF decided to impose countermeasures on Nigeria beginning December 15, 2002, unless the GON took immediate steps to remedy deficiencies previously identified by the FATF. However, FATF countermeasures were avoided when the GON, on December 14, 2002, enacted three pieces of significant anti-money laundering legislation which expanded the money laundering predicates to all crimes, establishing a currency transaction reporting requirement, expanded the types of financial institutions covered by anti-money laundering measures, and created the Financial Crimes Commission (FCC), a financial intelligence unit.

Despite these important reforms, the GON must continue to effectively cooperate with the FATF's AMERG to ensure that any remaining cited deficiencies are corrected and the newly enacted reforms are meaningfully enforced and implemented. The GON must support fully the FCC and ensure that it is adequately staffed and funded, and its staff adequately trained. Further, asset forfeiture laws must also be enforced and utilized to fight criminal activity.

Further, the GON must continue its cooperation with U.S. law enforcement agencies to disrupt syndicates perpetrating financial fraud, particularly those groups involved in advance-fee (419) fraud targeting U.S. citizens.

E. Corruption

The GON must take meaningful actions to improve the efficiency and credibility of the criminal justice system, including law enforcement agencies and the

judiciary. The GON should continue to battle corruption in law enforcement at all ranks by investigating, disciplining, dismissing, and, in appropriate cases, prosecuting corrupt officials.

The Independent and Corrupt Practices and Other Offenses Commission (ICPC) was established in late 2000, and in late 2001, hired its initial dedicated staff (investigators, prosecutors, and administrators). Although the ICPC is relatively new, the ICPC has demonstrated modest success through its prosecutions of officials, including Local Area Chairmen and a High Court Judge. In a democracy, it is imperative to have an independent, transparent institution, such as the ICPC, that can investigate allegations of public corruption.

As a measure of cooperation, the GON must investigate all credible petitions alleging corruption by federal, state, and local government officials. Furthermore, the NDLEA and NPF must also properly staff and fund special offices of professional responsibility to investigate misconduct.

F. Demand reduction

Nigeria's national drug control policy calls for efforts to involve non-governmental organizations, corporate, philanthropic, and service organizations in efforts against drug abuse, especially in the areas of prevention, intervention, treatment, rehabilitation, and social reintegration. The GON should provide adequate funds and personnel to implement its drug control policy plan. We would welcome information on specific actions that have been taken to implement the plan and meet the goals of article 14 of the 1988 Convention.

G. Controlled delivery

Controlled delivery operations as called for in article 11 of the 1988 Convention, whether in conjunction with the United States or other countries, are encouraged and will be considered by the President when making his decision on certification. Narcotics that pass through Nigeria on a controlled delivery operation will be counted toward Nigeria's interdiction statistics, even if seized in another country.

H. International co-operation and assistance for transit states

The United States will continue to meet the goal established in article 11 of the 1988 Convention by providing training courses and material assistance to the NDLEA, Nigerian police, and Nigerian customs.

JETER